

TOWN OF SUTTON
Zoning Board of Adjustment
Pillsbury Memorial Hall
Meeting Minutes
May 15, 2013

Present: Zoning Board of Adjustment Members: Bill Hallahan, Chair; Dane Headley; Ed Canane; and Doug Sweet; Sue Reel, alternate (Derek Lick, member, and alternate, Carla Krajewski were absent); Laurie Hayward, Land Use Coordinator; Ron Bourcier, first applicant; and Kevin Fadden, ITW Site Acquisition Specialist; Kevin Delaney, ITW Engineering & Regulatory Compliance Manager; and Steven Grill, of Devine Millimet, Attorney representing Industrial Towers and Wireless (ITW); Ivan Pagecik of IDK Consultants, a cell tower specialist advising the Board; and interested members of the public.

The meeting was called to order at 7:10 PM, by Bill Hallahan.

The Chair called for a roll call. The Land Use Coordinator (LUC) took a roll call. The Chair noted that alternate, Sue Reel, would come forward to stand in for Derek Lick.

Minutes from previous meeting: Doug Sweet moved the minutes from the prior meeting be approved. Bill Hallahan stated that he wanted the word “not” added to the second paragraph on page 2. The minutes of the April 17, 2013 meeting were unanimously approved as amended.

At the Chair’s request, the Land Use Coordinator (LUC) read the notice for the first hearing:

“You are hereby notified of a Public Hearing to be held on **May 15, 2013** at or around 7:30 p.m. at the Pillsbury Memorial Town Hall, 93 Main Street, Sutton Mills, NH, concerning a request:

By **Ronald E. and Bethany J. Bourcier, PO Box 331, Bradford, NH 03221, Tax Map # 02-718,466** for the following variances:

1. a Variance to Article III:L, Height to construct a dwelling whose height will be 40 feet which is 5 feet above the 35 foot height limit in a residential district;
2. a Variance to Article IV:C.4 to construct a dwelling within the road frontage setback requirement; in a residential district;
3. a Variance to Article X.D.1 and D.2 to construct a dwelling within the wetland setback requirement in a wetland overlay district; in a residential district.”

The Chair explained that this is a bit unusual as there are three variances which will each be taken up separately. Hallahan explained the process and then asked Mr. Bourcier to step forward. Hallahan further explained that there was a prior variance requested and approved

in 2008 and that this is much the same. He asked Mr. Bourcier if that is correct and Mr. Bourcier said it that it is. Mr. Bourcier explained that, in a recent meeting of members of the Blaisdell Lake Protective Association., there were discussions about building in a wetland and that discussion caused him to decide to build up with a garage underneath at ground level. Doug Sweet noted that it would be good to make sure that the Fire Department is OK with that.

The Chair asked if the members wanted to close the initial discussion and open the meeting for comments. It was agreed to open the meeting to public comment. Sharon Kenrick stood and explained that she is the neighbor behind the lot in question and she asks that the applicant keep the house as close to the 35 feet high as possible. She noted that she is happy that the house is moved slightly but is still concerned about height. Harry Rand spoke stating that he understood when the meeting was held by the Blaisdell Lake Protective Association it was stated that the flood plain in that area was not an issue. He didn't see that there was a flood plain on the west side. He lives two doors down. He stated that he does feel that the proposed new house represents an improvement for the neighborhood.

The question came up regarding a DES Permit and Mr. Bourcier said that he already has DES approval. Doug Sweet confirmed that would not have expired and the changes under consideration would not likely require a new permit.

The Chair moved to close the hearing on variance 1, height (ZBA 2013-06.01). It was seconded and unanimously voted to close the hearing. The Chair called for worksheets. There was some discussion about the ways that this application met the spirit of the ordinances, especially in that the new design for the house might be better suited to a flood zone, especially as the basement is at ground level and living areas now well above ground. Ed Canane suggested approval be conditioned on approval by the fire department.

Doug Sweet moved to approve the variance to allow the house to be up to 40 feet in height. He added that there should be a condition that fire department review and let the board know whether there are issues with a 40 foot height. Ed Canane seconded the motion and the variance for height was unanimously approved with the condition that the Sutton Fire Chief be asked to comment on the height and that the applicant work to keep the height as low as possible; but in no case over 40 feet.

The Chair opened discussion on variance 2, road set back (ZBA 2013-06.02). Bill explained the issue with Route 114 and its changing width. Doug Sweet stated that he understands that the road is 4 rods wide at the location of the lot in question. The Chair read the ordinance. The existing house is 36.6 feet from the centerline and in the new design will be 52.1 feet from the centerline and, therefore, further from the centerline of the road. The Chair made a motion to close the hearing. Doug Sweet seconded and it was approved unanimously to close the hearing on the second variance. The chair called for worksheets.

The Chair moved that variance 2 for set back from the centerline of a 4 rod road be given for a 52.1 setback; it was seconded and approved unanimously.

The Chair moved on to variance 3, wetlands setback (ZBA 2013-06.03). The Chair explained that this is the setback from the brook and relates to Article X.D.1 and D.2 of the Ordinance. He read the article. The Chair asked whether the current proposed house extends further into the wetlands than before. Ron explained that the proposed house would extend further than the current house; but, it represents an improved or less intrusive house than was approved in 2008. In 2008, the closest point was 17 feet and the new one is only 30 feet from the brook at the closest point. After review that was changed to 23 feet. It was also noted that in the 2008 case, there was a letter from Jeff Evans certifying the wetlands. So the current proposed house is less nonconforming than the variance approved in 2008. Ron Bourcier explained that the footprint has been reduced from the 2008 plan by 240 square feet. The Board reviewed the plans and discussed with the applicant the footprint and proposed location of the structure. Doug Sweet asked regarding erosion control. Ron Bourcier stated that they already have a plan on file from the old approval which included an erosion control plan and that he thinks plan should be adequate as the proposed house has a smaller footprint. Ed Canane questioned whether the wetland was a river or perennial stream. There was some discussion including that there were no fish in the brook. It was determined to not be. There was a call for additional public discussion. There being no further discussion, the Chair closed the public meeting and called for worksheets.

The Chair asked if Ed Canane wanted to make a motion. Ed moved that the variance be approved with one condition that the ZBA be provided with an erosion control plan approved by DES. He amended the motion to clarify that the plan submitted be a copy of the applicant's erosion and sediment control plan. The motion was seconded and unanimously approved as amended.

The Chair read the approval with conditions: that a copy of the erosion and sediment control plan is provided to the ZBA. He told the applicant that the Board had approved all three requests for variance with the condition on the wetland setback that the applicant provide the Zoning Board of Adjustment with a copy of the erosion and sediment control plan which is part of his DES Shoreland Permit and explained that there was a thirty day appeal period before the decision is final.

This closed the first public hearing.

At the Chair's request, the Land Use Coordinator (LUC) read the notice for the second hearing:

"You are hereby notified of a Public Hearing to be held on **May 15, 2013** at or around 7:00 p.m. at the Pillsbury Memorial Town Hall, 93 Main Street, Sutton Mills, NH, concerning a request:

By **Industrial Tower and Wireless, LLC, 40 Lone Street, Marshfield, MA 02050, Tax Map # 01-406,086 and # 01-408,090** for a Variance to Article XI:F.1.b (was Article III:O) which limits the height of wireless antenna towers.

ITW proposes to construct a 165 foot wireless telecommunications tower along with accompanying equipment area. The proposed site is located on Route 103 in a rural-agricultural district.”

The Chair opened the second hearing, asking that the LUC take roll call. Roll call was taken and it was noted that the alternate Sue Reel will be sitting in for Derek Lick and that Ivan Pagecik would be sitting at the table and asking and fielding questions. The Chair asked if that is “OK” with ITW. They said it is “OK”. Kevin Delaney stepped forward. He handed out photos that ITW took, including two photos in which the balloon could clearly be seen and in which they had added a representation of the tower. There was some discussion about efforts to check various locations that were visited and that at various places checked the balloon could not be seen. It seems primarily visible from the property owner’s properties. Kevin also provided a topographic map of the immediate area. He also gave the board a letter that stated that they did not wish to release information about specific towers and carriers.

The Chair explained that the ordinance requires that there be a letter of intent from a subscriber. He further explained the reason for that requirement and that all of the towers in Sutton have had a subscriber or subscribers when the application came before the board.

Steve Grill came forward. He stated that he had discussed this with Kevin Delaney. He feels that, if they build, the carriers will come. He feels the site is obviously, from the balloon test, a very good one. There was a break and the board also discussed this. In the course of discussing the need for a letter of intent, Mr. Grill indicated that the letter of intent only applied to the special exception and he would like the Board to move forward on approving the variance. The LUC stated that she thought that the application requirement for variance or special exception included that there be a letter of intent. Doug Sweet stated that was not the case and that the letter was a requirement of the special exception that would allow a cell tower. The specific ordinance, Article XI.C.2.e was consulted and it was determined to be specifically referring to an application for Special Exception. In the course of that discussion, the question was posed whether to hear the Special Exception first, despite the fact that generally the Board would begin with the variance and move to the special exception. In this case, however, it might be good to determine whether there is a completed application to permit a cell tower if one of the requirements, a letter of intent, is not provided.

Ivan was asked to speak to the height variance request. He stated that he took many pieces of information and plugged it into computer models. He also gave the board some background information on cell tower coverage, types of carriers, and types of installations. He did describe some different types of installations including monopoles with interior, so not visible, antennas and equipment kept in a basement and therefore not visible. Asked by Kevin Fadden where that has been done, Ivan stated that the Massachusetts town of Plymouth did that in a down-town location. In preparing the data and his analysis for the Board, Ivan explained that he looked at a couple of situations, 1. a PCS type carrier (Sprint, T-Mobile AT&T are examples), typically 1900 MHz and 2. installation at 800 MHz (Verizon or US Cellular for example) which is

typically placed lower on a tower. He provided coverage maps with different variables including lowering the tower height to 135 feet. He explained each of these options.

The Chair asked Ivan to discuss his summary analysis. Ivan stated that, based on the Bradford site being added, there would still be “less than reliable” coverage on Route 103. Ed asked how many carriers Ivan assumed. Ivan stated that he assumed five carriers. He further explained that a 135 foot tower limits the coverage by allowing only one PCS carriers. At 145 feet, there could be two PCS carriers. Ed asked how many to have three PCS carriers. Ivan said 155 feet – each 10 feet up after 135 feet allows an additional PCS carrier to be installed on the tower. From 105 to 135 feet other non-PCS carriers can be added. Ed Canane asked whether there would be changing quality of signal depending on where on a tower a carrier’s equipment was placed. Ivan explained that the top of the tower, under certain conditions can have a better signal than in some places lower on the tower. Ed then asked what the duration a carrier signs on for. Ivan said that carrier agreements can be in place for years. The Board had no further questions of Ivan.

Steve Grill stepped forward. He asked Ivan regarding the centerline that he used in his models. He noted that he felt ITW’s models resulted in similar information to that provided by outside specialist, Ivan. He stated that he expected that should increase the degree of confidence in ITW’s requests and models. He also explained that sometimes PCS carriers do place equipment that is the 800 MHz level. Ed Canane stated that he could see how ITW with a 165 foot tower could have 4 PCS and 3 other carriers.

Dane Headley asked if Ivan had any sense of current cell tower capacity demand. Ivan said it is all cyclical and when they had the crash in 2001 everything slowed and there was little demand and there was nothing much happening in adding new installations. He feels that at some point there will be a significant expansion in demand for filling coverage gaps such as the one on Route 103. Carriers can see that calls are lost on Route 103. Dane noted that cell towers in Sutton come in with one subscriber and never seem to add any others. Ivan said that he feels it’s all about money and where a tower is being placed. Currently there is not much money going into the installation of new towers as money is primarily going towards upgrading current services. Ed asked for an explanation of ITW’s analysis, especially the last sentence of the letter handed out.

Chair again asked about the information that the Board has requested. The list of requested items from the prior meeting was read and it was agreed that all of the items previously requested were satisfied with the exception of the information about locations and number and types of subscribers. Kevin Delaney stated that he could not release it; but would ask the individual who can whether they can and what information can be released. Bill Hallahan explained that his concern about approving a height variance with no information about history of subscribers to other ITW locations and no letter of intent is that the Board approve a height based on several carriers, five or more and that there is never more than one so there is never a need for a tower as high as requested. The whole question is do we need a tower that high. Dane Headley stated that he looks at this as similar to a contractor asking a bank to finance

construction where there is no proof of demand for houses, nor contracts to build any houses. Doug Sweet stated that he feels the townspeople have made it clear that they do not want tall towers and that, considering the lack of information on carriers on other installations; he could only consider a lower tower of say 125 feet or 135 feet. Ed noted that 125 feet would preclude having a PCS carrier. The discussion returned to the idea of addressing the Special Exception first. The Chair asked Ivan whether he had any input. He said that he had seen situations where a tower was approved at a lower height and as carriers came on the applicant was allowed to request a height increase.

There was discussion and an agreement amongst Board members that there should be a continuance because there has not been an adequate response to the request for information made by the Board. The Chair noted that the Board has a variety of options and it can deny, approve, approve with conditions, ask for a continuance to provide time for research or to obtain more information from the applicant, or deny without prejudice. There was further discussion amongst the members. Sue Reel spoke in favor of a lower height than requested; but stated her preference for a continuance. Ed Canane spoke in favor of a height that will allow more than one carrier. The LUC questioned whether with all of the questions about the height without information about carriers and their likely number, they should take up the Special Variance first. Ed stated that he might be in favor of hearing the Special Exception first; but, he really wanted to hear from the abutters at this hearing. Sue Reel concurred. The Chair asked Ivan whether he had any input. He said that he had seen situations where a tower was approved at a certain height and as further carriers came on the applicant was allowed a height increase. He said he knows of a lattice tower that never reached its full build out but was allowed to increase as carriers came on. **After discussion, it was agreed that there would be a continuance to wait for additional information from ITW. ITW agreed to the continuance.**

The Chair stated that he would take public input. Sandy Olin stood up. She lives on 10 Birch Hill Road and her property abuts Jessica Blaney's property. She stated that she was able to clearly see the balloon from multiple locations on their property and she feels this will definitely impact their property values. She noted that sound and health factors as well as the visibility of the tower are all areas of concern to her and to her husband. She is concerned that the lattice type of tower is noisier because of the way the wind moves through it. She also stated that she feels there is much too little benefit against the cost to abutters. David Stotler spoke, stating that he wants to know what benefits come to Sutton residents with this tower. And, specifically he wants to know why the Board would consider a tower when there was not yet a carrier to create the need for a tower. Chris Stotler stated that he had researched the internet and discovered that ITW had sued a number of towns for tower approvals. Bob Shoemaker who lives who lives on Morse Lane stated that he could see the balloon from the corner of Morse Lane. He wonders how the town might get a lower tower. The Chair noted that he felt that ITW would not be applying for such a large tower without the expectation that multiple users would eventually use it. Michael Olin spoke stating that he felt that a tower on Warner's Mink Hills would provide much better coverage. **The Chair called for additional**

comments. There being none, the public hearing was closed. The Chair stated that the meeting would be continued for the next regular meeting on the third Wednesday of June.

Bill Hallahan moved to close the public hearing and continue the case to the next regular meeting. Dane seconded the motion and it was unanimously voted to schedule a continuance of the hearing to June 19, 2013.

This closed the second public hearing.

There was a brief discussion with Ivan Pagecik about how to track tower installations and their carriers. He told the board that he suggests that anyone that wishes to add an antenna be required to come before the ZBA so that the ZBA be able to do a better job of monitoring installations.

Next meeting is to be held Wednesday June 19th, 2013 at 7pm.

There being no further business, the meeting was adjourned at 10:28 PM.

Respectfully submitted,

Laurie Hayward

Land Use Coordinator